APPEAL NO. 021375
FILED JULY 17, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on April 17, 2002. On the only unresolved issue before her, the hearing officer determined that the appellant (claimant) did not have disability from September 6, 2001, through March 11, 2002 (the hearing officer phrased the determination that the claimant had disability "only through September 5, 2001").

The claimant appealed, citing medical reports which lend "support to the conclusion that the claimant was unable to work without any restrictions," and that a report from Dr. V, the claimant's initial treating doctor should be "excluded" or "discounted." The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable "second metatarsal and lateral malleolus" injury of the left foot on _____. At the CCH, the parties stipulated and agreed that the compensable injury included a "left lateral ankle sprain" and that the carrier had paid income benefits through September 5, 2001. Dr. V, the claimant's treating doctor at that time, released the claimant to return to work on September 5, 2001, with the restriction that he be allowed to walk slowly for the first two weeks and return if he had any problems. The claimant did return to work for a period of time, even though he testified that he did not feel ready to return to work. The claimant subsequently changed treating doctors to a chiropractor who took the claimant off work on October 30, 2001, through March 11, 2002, when the claimant was released and did return to work. The claimant, at the CCH, testified that he still believes that he is unable to work due to the ankle sprain and showed the hearing officer "his allegedly swollen left ankle." The hearing officer commented that the claimant's "ankle appeared to be of normal size even when compared to his right ankle."

The medical evidence was in conflict and although the claimant was of the opinion that he was unable to work, the question of disability, as defined in Section 401.011(16) is a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong of

manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal.

Regarding the claimant's contention that a report dated March 25, 2002, from Dr. V should be excluded or discounted because of lack of timely exchange, the hearing officer found good cause to admit the report. Whether or not Dr. V had other medical reports was argued before the hearing officer. We do not agree that the hearing officer abused her discretion in admitting the late exchanged information or that the evidence is of such a nature that the exclusion of that evidence would have led to a different result. *See* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge